

CIVIL COMPLAINT FORM TO BE USED BY A *PRO SE* PRISONERIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIAFILED
HARRISBURG, PA

MAR 19 2024

Marvin ^{et al.} Running River Banks NDS137
Full Name of Plaintiff Inmate NumberPER STT
DEPUTY CLERKCarl Varner
Dale Arnold v.Civil No. _____
(to be filled in by the Clerk's Office)Superintendent Bradley Booher et al
Name of Defendant 1 capacity Both☐ Demand for Jury Trial
☐ No Jury Trial DemandChaplain Hansard
Name of Defendant 2 capacity BothTracy Smith
Name of Defendant 3 capacity BothKenneth Goodman
Name of Defendant 4 capacity BothJason Stauffer
Name of Defendant 5(Print the names of all defendants. If the names of all
defendants do not fit in this space, you may attach
additional pages. Do not include addresses in this
section).Defendant 6. Kelly Evans Both
Defendant 7. Jennifer Rossman official and
Individual
Both

I. NATURE OF COMPLAINT

Indicate below the federal legal basis for your claim, if known.

- ☒ Civil Rights Action under 42 U.S.C. § 1983 (state, county, or municipal defendants)
- ☐ Civil Rights Action under Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) (federal defendants)
- ☐ Negligence Action under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346, against the United States

II. ADDRESSES AND INFORMATION

A. PLAINTIFF

Marvin Running River Banks

Name (Last, First, MI)

ND5137

Inmate Number

Place of Confinement

SCI Benner Township

Address

301 Institution Dr. Bellefonte Pa. 16823

City, County, State, Zip Code

Indicate whether you are a prisoner or other confined person as follows:

- ☐ Pretrial detainee
☐ Civilly committed detainee
☐ Immigration detainee
☒ Convicted and sentenced state prisoner
☐ Convicted and sentenced federal prisoner

B. DEFENDANT(S)

Provide the information below for each defendant. Attach additional pages if needed.

Make sure that the defendant(s) listed below are identical to those contained in the caption. If incorrect information is provided, it could result in the delay or prevention of service of the complaint.

Defendant 1:

Superintendent Bradley Booher

Name (Last, First)

(Superintendent) at SCI Benner Township

Current Job Title

301 Institution Dr.

Current Work Address

Bellefonte PA 16823

City, County, State, Zip Code

Defendant 2:

Henry Hansard

Name (Last, First)

Head Chaplain.

Current Job Title

SCJ Benner Township, 301 Institution Dr.

Current Work Address

Bellefonte PA. 16823

City, County, State, Zip Code

Defendant 3:

Tracy Smith

Name (Last, First)

Director Bureau treatment services

Current Job Title

PADOC 1920 Technology Parkway

Current Work Address

Mechanicsburg PA 17050

City, County, State, Zip Code

Defendant 4:

Kenneth Goodman

Name (Last, First)

?

Current Job Title

PADOC 1920 Technology Parkway

Current Work Address

Mechanicsburg PA 17050

City, County, State, Zip Code

Defendant 5:

Jason Stauffer

Name (Last, First)

?

Current Job Title

PADOC 1920 Technology Parkway

Current Work Address

Mechanicsburg Pa 17050

City, County, State, Zip Code

Def. 6. Kelly Evans

Page 3 of 6

1920 Technology Parkway

Def 7. Jenniffer Rossman / 301 Institution Dr.
Bellefonte Pa. 16823

(continued) CIVIL COMPLAINT FORM TO BE USED BY A *PRO SE* PRISONER

Name of Defendant 6 Kelly Evans, capacity both

Name of Defendant 7 Jenniffer Rossman , capacity both

Name of Defendant 8 Rev. Ulli Klemm, capacity both
In his official and individual capacity

(continued) ADDRESSES AND INFORMATION

Defendant 8:

Name: Rev. Ulli Klemm
Current Job Title: PA Department of Corrections
Current Work Address: 1920 Technology Parkway
City County State Zip Code: Mechanicsburg PA 17060

III. STATEMENT OF FACTS

State only the facts of your claim below. Include all the facts you consider important. Attach additional pages if needed.

A. Describe where and when the events giving rise to your claim(s) arose.

The Pennsylvania Department of corrections along with Defendants from SCI Benner Township violated Plaintiff's religious rights at SCI Benner where Plaintiff is confined during the sacred Green corn Feast and Indigenous New year during the month of ~~July~~ ^{July-August}, 2023.

B. On what date did the events giving rise to your claim(s) occur?

Plaintiff was deprived of his right to practice his religion during the middle of August 2023, And was given an American New year meal on 1-1-24

C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what?)

Facts of this case are ascertained as The PA D.O.C and its employees at SCI Benner implementation of an [ex post facto] policy that runs contrary to established Constitutional Law, Treaty and Acts. Defendants have acted under the color of state law and are liable for a reasonable person should have ~~been~~ known especially when Plaintiff made Defendants aware of the constitutional violations. [See] Request form and Letter exhibits [A] Letter to Tracy Smith Bureau of treatment services, [B] [C] [D] [E] requests. Defendants have substantially burdened Plaintiff and the Native American community at SCI Benner in violation of the first amendment, Religious Land use and Institutionalized persons Act (RLUIPA) Plaintiff avers that defendants are also liable for violating the 14th amendment equal protection clause for the unfair treatment towards the Native American community compared to that of the Jewish community who were allowed to purchase their traditional matzah bread. All defendant shared personal involvement in the enactment and enforcement of this policy.

IV. LEGAL CLAIM(S)

You are not required to make legal argument or cite any cases or statutes. However, state what constitutional rights, statutes, or laws you believe were violated by the above actions. If you intend to assert multiple claims, number and set forth each claim in separate paragraphs. Attach additional pages if needed.

claim 1. Religious Land Use and Institutionalized Persons Act (RLUIPA)
 claim 2. Free Exercise clause of the First Amendment of
 the United States Constitution (claim 3) Equal protections clause
 Fourteenth Amendment. citing William V. Harry et.al 1:23-cv
 0037

Plaintiff has a meritorious claim under RLUIPA
 citing Washington V. Clemm, 497 F.3d 272, 276 (3rd Cir 2007).
 section 3 of RLUIPA provides that "no government
 shall impose a substantial burden on the religious
 exercise of a person residing in or confined to an institution
 unless government establishes that the burden is in furtherance
 of a compelling governmental interest and is the least
 restrictive means of furthering that interest 42 U.S.C. § 2000cc
 citing Williams V. Harry et.al 1:23-cv-0037 (1X)

V. INJURY

Describe with specificity what injury, harm, or damages you suffered because of the events described above.

I have bought unbalance and shame to the ancestral spirits
 I am Emotional, mentally, spiritually stressed and anguished
 with the act of Defendants violation, and will suffer more
 harm if this violation is not corrected

VI. RELIEF

State exactly what you want the court to do for you. For example, you may be seeking money damages, you may want the court to order a defendant to do something or stop doing something, or you may be seeking both types of relief. If you are seeking monetary relief, state your request generally. Do not request a specific amount of money.

I would like The D.O.C's policy stricken and The
 Native American Feast restored entirely. I would
 like any and all money deemed just and
 fair according to established precedent, obtained in Religious
 rights cases.

LEGAL CLAIMS CONTINUED

B. Defendants violated Plaintiff's rights under the First and Fourteenth Amendment of the United States Constitution.

Defendants acted under the color of state law to violate Mr. Banks' First Amendment right to the free exercise of religion and his Fourteenth Amendment right to Equal Protection from discrimination. The First Amendment provides Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...by incorporation through the Fourteenth Amendment, the free exercise clause of the First applies to the States. The Fourteenth Amendment further provides that "state not deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

It is well settled that "convicted prisoners do not forfeit all constitutional protections by reason of the conviction and confinement in prison." See *Bell v Wolfish*, 441 U.S. 520 (1979).

Further, inmates clearly retain protections afforded by the First Amendment including its directive that no law shall prohibit the free exercise of religion." *Jupiter v. Johnson* No. 3:10-CV-01968, 2011 U.S. Dist. Lexis 115406 *52 (MD Pa. April 26, 2011) Sentenced prisoners enjoy the freedom of religion under the First and Fourteenth Amendments and they are protected against invidious discrimination on the basis of race or religion under the Equal Protection clause of the Fourteenth Amendment.

In order to establish a Free Exercise clause claim, a Plaintiff must establish that the defendant's actions contravene his sincere religious beliefs. (*Jupiter V Johnson*, zoll U.S. Dist. Lexis 115406 at *32-33. There are several factors to consider when determining the reasonableness of a regulation which impinges on a constitutional right, including:

1) whether there is a valid rational connection between the prison regulation and the legitimate government interest put forth to justify it.

2) whether there are alternative means of exercising the right that remain open to the prisoners which the defendant failed to investigate and explore this notion.

3) The impact that an accommodation of the asserted right will have in guards and other inmates and on the allocation of prison resources generally which there is no impact on prison resources because The Native American prisoners PAY for their Green Corn Feast meal themselves.

4) Whether there are alternatives that fully accommodate the prisoners' right at a de minimis cost to valid penological interest which Defendants failed to put forward even in the second policy that Secretary Laurel Harry later distributed after the violation of Plaintiffs rights dated 11-15-2023. A regulation bears no valid rational connection to the asserted penological goal if the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational. It is the D.O. Co's burden to demonstrate a rational connection between the decision at

issue and a valid penological interest. This burden though slight, must amount to more than a conclusory assertion. The Equal Protection Clause of the Fourteenth Amendment exists to protect similarly situated individuals from disparate treatment under the law or by some other state action. *Artway V. Atty General of New Jersey* 81 F.3d 1235,1267 (3rd Cir. 1996) Plaintiff must establish that (1) compared with others similarly situated he was electively treated and (2) the elective treatment was motivated by an intention to discriminate on the basis of impermissible considerations such as race or religion to punish or inhibit the exercise of constitutional rights or by a malicious or bad faith intent to injure the person, *Morales V. Beard* 2008 U.S. Dist. Lexis 108062 * 21 (W.D.Pa. 2008) which it appears this way being that compared to the Jewish community who were allowed to order Matzah Bread for their Holy feast.

When the Native American community was denied outright to participate in their feast. Also it appears to be maliciously done where Plaintiff wrote letters to defendants expressing concerns about the violation of his right to no avail (see) Exhibits A, Exhibit F and F-1 Jewish Matzah purchasing policy. Also see Exhibits G, G-1 where inmates are able to purchase outside privileged foods from stores such as KFC. It is an absurd notion that inmates can be denied their right to ceremonial food that they themselves purchase but be permitted to purchase special food that is a mere privilege.

Notably defendants' substantial burden on Plaintiffs right to participate in the Green Corn Feast Ceremonial meal violates his clearly established right to exercise his traditional Native American Religion. There is no doubt that Mr. Banks' religious beliefs are "sincere". Further, a reasonable person knows or should know that by denying him and Native American prisoners similarly situated their right to their feast violates the free exercise clause of the First Amendment. Defendants have only given a conclusory assertion - see exhibit B.2. Therefore, while it is not necessary to consider the other free exercise clause factors, it is important to note that there are not alternatives to a Green Corn Feast ceremony, nor has the D.O.C. considered any.

Moreover, Defendants disparate treatment to Mr. Banks' rights to a Native American ceremonial feast violated the Equal Protection Clause. As provided above, inmates at SCI Benner who practice other mainstream religions are afforded more opportunities for spiritual enlightenment and ceremonies, including but not limited to, Jewish Kosher meals, and the purchase of Matzoh for their feasts, and privilege and purchases.

Therefore Mr. Banks' selective treatment is based on his religion, and he has been discriminated against and treated differently from other similarly situated inmates on that basis.

Accordingly, Defendants have intentionally, recklessly, and callously deprived Mr. Banks of his First Amendment right to the Free Exercise of religion and violated the Equal Protection clause of the Fourteenth Amendment. Therefore Defendants are liable to Mr. Banks under 42 U.S.C. ss 1983.

VII. SIGNATURE

By signing this complaint, you represent to the court that the facts alleged are true to the best of your knowledge and are supported by evidence, that those facts show a violation of law, and that you are not filing this complaint to harass another person or for any other improper purpose.

Local Rule of Court 83.18 requires *pro se* plaintiffs to keep the court informed of their current address. If your address changes while your lawsuit is being litigated, you must immediately inform the court of the change in writing. By signing and submitting the complaint form, you agree to provide the Clerk's Office with any changes to your address where case-related papers may be served, and you acknowledge that your failure to keep a current address on file with the Clerk's Office may result in dismissal of your case.



Signature of Plaintiff

Date

Susan Strebig
261 Wentworth Ave. E.
St. Paul MN 55118

Office of the Clerk
United States District Court
Middle District of Pennsylvania
228 Walnut Street
P.O. Box 983
Harrisburg PA 17108

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